IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 3RD OCTOBER 2006 / 11TH ASWINA 1928

MFA.No. 351 of 1997()

OP(MV.366/1997 of SPL.COURT FOR EC ACT CASES &MACT,TSR

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APPELLANT:

THE DIVISIONAL MANAGER, ORIENTAL INSURANCE CO.LTD.,
THRISSUR, REPRESENTED BY THE ASSISTANT MANAGER,
MOTOR THIRD PARTY CLAIMS CELL, M.G.ROAD, ERNAKULAM,
COCHIN-682 035.

BY ADV. SRI.M.JACOB MURICKAN

RESPONDENTS:

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1. GOVINDAN, S/O.KIZHAKKOOT SANKARAN, ORUMANAYUR AMSOM , DESOM, CHAVAKKAD TALUK.

2. AYYAPPU, S/O.DO. DO.

3. KALIYAMMU, D/O.DO. DO.

4. SARADA, D/O. DO. DO.

5. SUBASH LAL, S/O.RAGHAVAN, PUZHAKKADAVIL HOUSE, KARALAM DESOM/VILLAGE, MUKUNDAPURAM TALUK.

BY ADV. SRI.M.PREMCHAND
SRI.P.V.MADHAVAN NAMBIAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON03/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Thottathil B. Radhakrishnan, J.

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M.F.A.No.351 of 1997

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Dated this the 3rd day of October, 2006.

JUDGMENT

This appeal is by the insurer.

2. A vehicle insured with the appellant met with an accident resulting in the death of a 70 year old male, who was a coolie at the time of the accident, going by the claim petition submitted before the Tribunal by his legal representatives. A total amount of Rs.50,000/- was claimed as compensation.

3. An eye witness to the incident was examined as P.W.1. The accident was proved.

4. It appears that none gave evidence regarding the necessary factors that would have enabled the court in the matter of fixing the compensation. This happened on the basis of a submission made on behalf of the claimants before the Tribunal that it would be sufficient if the minimum amount payable under no fault liability is paid and an endorsement to that effect

being engrossed on the claim petition.

5. It was urged based on the decision of the Division Bench of this Court in **New India Assurance Co.Ltd. v. Thankam (1995 (1) K.L.T. 323)** that though the amendment to the M.V.Act, 1988 as regards Section 140 was brought in later on, that could relate back to the accident in question, which occurred on 26-7-1987. The Tribunal accepted the said submission and the impugned award for Rs.50,000/- was passed.

6. Learned counsel for the appellant insurer points out that, as of now, the Full Bench of this Court in **Oriental Insurance Co.Ltd. v. Sheela Ratnan (1996(2) K.L.T. 695)** has held that Section 140 of the M.V.Act is part of the substantive law and not one relating to procedure and therefore it will apply only prospectively. It was further held that the right or the liability relates to the date of the accident and not to the date of consideration of the claim.

7. During the course of proceedings in this

appeal, the claimants were permitted to withdraw Rs.15,000/- out of the amount of Rs.25,000/- deposited as a condition for stay granted in this appeal.

8. The valuable right to compensation under the M.V.Act, 1939, as amended in 1988, and the entitlement to such compensation is not a right, which could be bartered off. This apparently is a reason why, with the passage of time, the period of limitation fixed for filing such application was also taken away. Under such circumstances, I am not inclined to tie down the case of the claimants by stating that they ought to be satisfied with the amount of compensation that may be granted under no fault liability, particularly when it was urged before the Tribunal that the claimants were entitled to Rs.50,000/- and that they would be satisfied with an award for Rs.50,000/-, though under no fault liability clause. With P.W.1's evidence on record, it has necessarily to be found that the accident was as a result of the negligence of the driver of the vehicle. Under such circumstances, the claimants are entitled to compensation, over and above

the amount awarded, under the no fault liability clause. Having regard to the age of the deceased at the time of the accident and the other attendant factors, including a reasonable life expectancy that could be attributable to the deceased and going by the age of his children reflected by the materials on record in the form of affidavits, I am inclined to fix the compensation to the claimants on account of the deceased Kalikutty at Rs.35,000/- with interest from the date of petition till date of deposit, since deposit has already been made.

In the result, the appeal is allowed modifying the impugned award by fixing the compensation due to the claimants as Rs.35,000/- with interest at 12% per annum from the date of petition till 25-1-1997 and thereafter at the rate of 8% till realisation. The amount of Rs.25,000/- already deposited shall be credited first against the principal amount due under this appellate award.

Thottathil B.Radhakrishnan,
Judge.

sl.

Thottathil B. Radhakrishnan, J.

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M.F.A.No.351 of 1997

JUDGMENT

Dated:3-10-2006